

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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AVAIL HOLDING LLC,

Plaintiff,

-against-

FRANCES RAMOS; COMMISSIONER OF SOCIAL
SERVICES OF THE CITY OF NEW YORK SOCIAL
SERVICES DISTRICT; CREDIT ACCEPTANCE
CORPORATION; CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD, NEW YORK
CITY TRANSIT ADJUDICATION BUREAU;

Defendants.
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Civil Action No:
19-cv-00117 (BMC)

Declaration of Christopher
Newton In Support of
Defendant's Motion for
Summary Judgment

Christopher Newton, in accordance with the provisions of 28 U.S.C. § 1746, declares as follows:

1. I am an attorney duly admitted to practice law in the States of New York and am admitted to practice in the United States District Court for the Eastern District of New York. I am employed by Queens Legal Services, attorneys for Defendant Frances Ramos in this matter.
2. I make this declaration in support of Defendant Frances Ramos' motion for summary judgment dismissing the complaint and granting her counterclaims to quiet title and for an award of attorneys' fees.

Procedural History

3. Plaintiff Avail Holding, LLC ("Avail") commenced this action by filing a verified complaint, certificate of merit, and proposed summonses on January 11, 2019. (Docket Nos. 1, 4-5.) In this action, Avail seeks to foreclose on Ms. Ramos' home located at 101-22 132nd Street, South Richmond Hill, New York 11419. (Docket No. 1, ¶ 1.)

4. Plaintiff served Ms. Ramos with process on March 19, 2019. (Docket No. 17.)
5. Ms. Ramos appeared in this action by serving her verified complaint with counterclaims on March 27, 2019. (Docket No. 14.) In her answer, Ms. Ramos raised several affirmative defenses, including that the action is barred by the statute of limitations and that Avail failed to provide required pre-foreclosure notices. (Docket No. 14.) She also asserted two counterclaims: to cancel and discharge the mortgage as time-barred under NY Real Property Actions and Proceedings Law § 1501(4), and to award attorneys' fees pursuant to NY Real Property Law § 282. (Docket No. 14.)
6. Avail filed an answer to Ms. Ramos' counterclaims on April 8, 2019, raising eleven affirmative defenses. (Docket No. 15.)
7. The Court held an initial status conference on April 16, 2019, at which the Court set a schedule for limited discovery on the statute of limitations issue and directed Ms. Ramos to serve and file her motion for summary judgment by May 14, 2019.
8. The Court subsequently extended Avail's deadline until May 28, 2019 to produce discovery that would disprove the statute of limitations defense, and also extended Ms. Ramos' deadline to serve her motion for summary judgment until June 4, 2019.

The Prior Actions

9. This is the fourth action concerning the same alleged default brought by Avail and its predecessors in interest. The first action was commenced on June 13, 2011 as FCDB FF1 2008-1 Trust v. Frances Ramos et al, and assigned Index Number 14111/2011 in the New York Supreme Court, Queens County (the "2011 Action").

10. A true and correct copy of the summons and verified complaint in the 2011 Action is attached as **Exhibit A** to this Declaration.¹
11. In June 2012, the plaintiff in the 2011 Action, FCDB FF1 2001-1 Trust (“FCDB Trust”) cross-moved summary judgment and an order of reference. A true and correct copy of FCDB Trust’s motion papers, which included an affidavit in support by Timothy Hapeman, Assistant Vice President of AMS Servicing LLC, is attached as **Exhibit B** to this Declaration.
12. In an order entered on January 13, 2013, the Supreme Court, Queens County dismissed the 2011 Action upon a finding that FCDB Trust failed to send a pre-foreclosure notice required by New York State law. A true and correct copy of the dismissal order is attached as **Exhibit C** to this declaration.
13. After the 2011 Action was dismissed, the subject loan was assigned to FRT 2011-1 Trust, which commenced a second foreclosure action in November 2013. The 2013 Action was dismissed in 2015 for another failure to provide necessary predicate notices. (*See Ramos Aff’t ¶¶ 6-7.*)
14. The subject loan was then assigned to Avail, who brought a third foreclosure action in this Court, *Avail Holding LLC v. Frances Ramos, et al.*, Civil Action Number 15-cv-7068 (NGG) (LB) (the “2015 Action”).
15. Avail was represented by the same law firm who currently represents it in this action. I appeared as Ms. Ramos’ attorney in that action.

¹ Certified copies of all court documents attached to this Declaration will be provided in the courtesy copy of this motion provided to the Court.

16. In March 2018, after I served Ms. Ramos' cross-motion for summary judgment to dismiss the 2015 Action, Avail agreed to voluntarily discontinue it by stipulation. That stipulation was so-ordered by the Honorable Nicholas G. Garaufis.
17. In accordance with this Court's scheduling orders, Ms. Ramos now moves for summary judgment dismissing the complaint with prejudice as barred by the statute of limitations, and for summary judgment on her counterclaims to cancel and discharge of record the subject mortgage and to award attorneys' fees in an amount to be determined on application.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 4, 2019
Jamaica, New York

/s/
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